

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

**UNION TELEPHONE COMPANY  
AMENDMENT TO PETITION FOR LIMITED WAIVER AND REQUEST  
FOR EXTENSION OF COMPLIANCE DEADLINES FOR  
MOBILITY FUND PHASE I PUBLIC INTEREST OBLIGATIONS**

Union Telephone Company (“Union”), by counsel and pursuant to Section 1.3 of the Commission’s Rules,<sup>1</sup> hereby amends its Petition for Limited Waiver and Request for Extension of Compliance Deadlines for Mobility Fund Phase I Public Interest Obligations (“Petition”),<sup>2</sup> to request an additional brief extension of the three-year deadline established in the Commission’s rules<sup>3</sup> for the submission of drive test data reports.

This Amendment applies only with respect to the following Census Tract for which Union was a winning bidder in Auction No. 901 for Mobility Fund Phase I support: Census Tract T56013940100-4610 (Fremont County, SAC 518005).<sup>4</sup> Specifically, Union requests an additional

---

<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> The Petition was filed by Union on July 29, 2016, in the above-captioned dockets.

<sup>3</sup> 47 C.F.R. § 54.1006(b).

<sup>4</sup> See *Mobility Fund Phase I Support Authorized for 40 Winning Bids*, Public Notice, 28 FCC Rcd 11040 (WTB, WCB 2013) (authorizing support for Union in 6 Census Tracts); see *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, FCC Public Notice, 27 FCC Rcd 12031, 12045-46

one month, or until November 30, 2016, to submit its drive test data for this Census Tract.

## **I. Background.**

In the Petition, Union requested that the Commission waive the requirements of Section 54.1006(b) of its rules, and extend the applicable drive test reporting deadline for Census Tracts T5600796800 and T56013940100-4610 (hereinafter, the “Census Tracts”) to October 31, 2016, 90 days from the existing July 29, 2016, construction and reporting deadline.

As explained in the Petition, Union was required to deploy networks that deliver 4G LTE service not later than July 29, 2016 (three years after the authorization of Phase I support for Union) for these Census Tracts. Union completed this requirement. Also, before the July 29, 2016, deadline, Union was required to submit drive test data showing mobile transmissions (supporting both voice and data) covering at least 75 percent of previously unserved areas.<sup>5</sup>

Though it successfully deployed 4G networks by July 29, 2016, to satisfy the 75 percent coverage requirement for these Census Tracts, unfortunately, as discussed in the Petition, unexpected delays beyond Union’s control had made it necessary for Union to request an extension of 90 days beyond the July 29, 2016, deadline, or until October 31, 2016, for the Census Tracts, to complete the required drive tests and submit the drive test data to the Commission to certify completion of construction and satisfaction of the network coverage requirement in the Census Tracts.<sup>6</sup>

To date, Union has already submitted the drive test data with the FCC for the other Census

---

(Attach. A) (2012). Union was also the winning bidder for four (4) 3G Census Tracts for which it has already completed construction.

<sup>5</sup> 47 C.F.R. § 54.1006(b).

<sup>6</sup> See Petition at 5-9.

Tract subject to the Petition.<sup>7</sup> For the reasons set forth below, Union is now requesting an additional one-month extension to submit the required drive test data for this Fremont County Census Tract.

**II. An Additional One-Month Extension Is Necessary To Enable Union To Complete the Collection and Submission of Drive Test Data and Prepare Propagation Studies for Census Tract T560139400100-4610.**

As explained in the Petition, although encountering some unexpected delays, which Union could not have foreseen and which hindered efforts to meet construction schedules, Union has worked through these delays and completed all planned cellular tower site construction in each of the two Census Tracts. A 90-day extension of the construction deadline was necessary, however, to enable Union to collect and report drive test data to the Commission, as required by Section 54.1006(b) of the Commission's Rules.

For the Fremont County Census Tract (T56013940100-4610), Union demonstrates in the following paragraphs its need for an additional one-month extension, or until November 30, 2016, to submit its drive test data and to prepare and submit propagation study data.

The general procedure followed by Union for purposes of complying with the Commission's drive test requirements involves the following steps:

(1) make a drive test "pass" through the Census Tract, with the objective of gathering coverage data for all road categories specified by the Wireless Telecommunications Bureau and the Wireline Competition Bureau for purposes of Auction 901;<sup>8</sup> for those eligible roads that are

---

<sup>7</sup> FCC Form 690 was filed by Union for SAC 518001 on October 31, 2016.

<sup>8</sup> *Mobility Fund Phase I Auction Scheduled for September 27, 2012, Notice and Filing Requirements and Other Procedures for Auction 901*, AU Docket No. 12-25, Public Notice, 27 FCC Rcd 4725, 4736 (para. 24) (WTB, WCB 2012) ("*Auction 901 Public Notice*").

deemed undrivable, Union obtains documentation demonstrating the reasons that it could not access the eligible roads;

(2) review the collected data for inclusion in an analysis that focuses principally on upload speeds, download speeds, and latency values;

(3) make as many additional drive test passes as may be necessary, if the data review reveals that sufficient data was not collected for all roads in the previous drive test pass;

(4) submit the drive test data to a third party vendor for post-processing; and

(5) prepare the necessary shape files to be included with the FCC Form 690 Payment Request 3;

The Fremont County Census Tract (T56013940100-4610) contains 2,559.68 eligible road miles (one of the larger Census Tracts receiving Mobility Fund Phase I support pursuant to Auction 901). Union commenced its drive testing for the Census Tract on or about May 2, 2016, and the most recent tests were conducted on or about October 14, 2016. A longer period than initially expected was required, due to the poor conditions of some of the eligible roads covered by the *Auction 901 Public Notice*, which unexpectedly extended the amount of time necessary to complete the most recent iteration of the drive test process and to prepare the drive test report for submission to the Commission.

In addition, while preparing the drive test results for submission, Union discovered that further drive testing was needed in certain areas in order to produce sufficient data for the submission. Nonetheless, even though the need for these multiple drive test passes for certain roads led to unforeseen delays in completing the drive testing, Union still was in a position to meet the requested October 31, 2016, deadline for reporting the drive test results.

Unfortunately, however, further unexpected difficulties intervened. Compiling the results

from the additional drive testing led to the determination that still further drive testing and post-processing are necessary. Specifically, a significant portion of eligible roads have been deemed undriveable, primarily due to these roads being private roads and therefore not publically accessible. At this time Union compiled approximately 300 barrier photographs for the Fremont County Census Tract, which demonstrate that approximately 600 eligible roads are considered undriveable roads.

Hence, in addition to conducting additional drive testing, Union is still compiling the undriveable road files and, if necessary, taking additional photographs. Further, based on the amount of undriveable roads in the Fremont County Census Tract, it is critical for Union to take the steps necessary to provide propagation studies that most accurately reflect its 4G coverage in the Census Tract thus, additional time is needed for the preparation of propagation maps showing that Union is providing 4G coverage along the undriveable private roads in the Census Tract.

As a result, the need for Union to complete additional drive testing, to prepare the undriveable road demonstrations, and to formulate the propagation studies to show coverage of the undriveable roads, all have led to unexpected delays. These delays have prompted Union's request for an additional one-month extension.

**III. Grant of an Additional One-Month Extension To Enable Union To Complete Drive Testing, Prepare Propagation Studies, and Collect and Submit Drive Test and Propagation Study Data for the Fremont County Census Tract Would Serve the Public Interest.**

The Commission may waive its rules based upon a showing of good cause,<sup>9</sup> and it may exercise its discretion to waive a rule where particular facts would make strict compliance with the

---

<sup>9</sup> 47 C.F.R. § 1.3.

rule inconsistent with the public interest.<sup>10</sup> The Commission may also take into consideration, on a case-by-case basis, factors involving equity, hardship, or more effective implementation of overall policy.<sup>11</sup> “Waiver of the Commission’s rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.”<sup>12</sup>

Moreover, the Commission has the authority to carry out its responsibilities by promulgating rules of general application that establish the “public interest” for a broad range of cases. In adopting these general rules, however, the Commission is not relieved of its obligation to seek to advance the “public interest” in particular, individualized cases. Thus, the Commission’s authority to waive its rules resembles an obligation, in that it is a *sine quo non* to its ability to adopt otherwise inflexible rules.<sup>13</sup> This waiver authority is a necessary “safety valve” that makes the system work.<sup>14</sup>

As explained in the Petition, in the case of the Census Tracts, Union has acted diligently

---

<sup>10</sup> See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“*Northeast Cellular*”) (citing *WAIT Radio*, 418 F.2d at 1159).

<sup>11</sup> See, e.g., *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Sprint Communications Company, L.P. Petition for Waiver*, CC Docket No. 94-129, Order, DA 00-620 (rel. Mar. 17, 2000), at para. 4 (citing *WAIT Radio*, 418 F.2d at 1157).

<sup>12</sup> *Petitions for Waiver of Universal Service High-Cost Filing Deadlines*, WC Docket No. 08-71, *Advantage Cellular Systems, Inc. Petition for Waiver of the FCC’s Universal Service Rules*, CC Docket No. 96-45, Order on Reconsideration, 31 FCC Rcd 3753, 3754 (para. 5 n.12) (2016) (citing *Northeast Cellular*, 897 F.2d at 1166).

<sup>13</sup> See, e.g., *U.S. Cellular, Petition for Limited Waiver and Request for Extension of Dates for Compliance with Mobility Fund Phase I Public Interest Obligations*, WC Docket No. 10-90, WT Docket No. 10-208 (filed May 5, 2016) (“U.S. Cellular Petition”), at 12.

<sup>14</sup> See *WAIT Radio*, 418 F.2d at 1157, 1159 (noting that “[t]he limited safety valve [provided by the waiver process] permits a more rigorous adherence to an effective regulation”), cited in *Smith Bagley, Inc., Petition for Waiver, Expedited Action Requested*, AU Docket No. 14-78 (filed Aug. 8, 2014), at 4.

and effectively to accelerate its 4G network deployment efforts. Thus, Union is now able to provide 4G broadband services to communities in each Census Tracts for which it sought a 90-day extension in the Petition.<sup>15</sup>

The brief extension of the July 29, 2016, deadline was necessary to enable Union to provide drive test data showing that it has complied with the Phase I coverage requirements. In these circumstances, in which Union has overcome various delays and has completed construction by the deadline, neither equity nor the effective implementation of the Commission's overall Mobility Fund and universal service policies would be served by imposing any penalties pursuant to Section 54.1006(f) of the Commission's rules.

In this Amendment to the Petition, Union has shown that, in the case of the Fremont County Census Tract, although Union proceeded reasonably and with due diligence in working toward the submission of drive test reports by the October 31, 2016, deadline, unforeseen circumstances beyond Union's control have intruded and prevented reporting by that date. Denying Union's request for an additional one-month extension, from October 31, 2016, to November 30, 2016, would not serve the public interest because imposing monetary or other penalties pursuant to Section 54.1006(f) would be inequitable, and would not be an appropriate means of implementing the Commission's overall policies, in light of the successful efforts Union has made, and the various delays Union has overcome, to deploy a 4G network throughout the Census Tract.

---

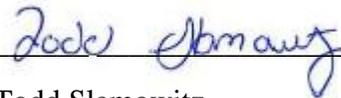
<sup>15</sup> See Petition at 3, 4-5.

**IV. Conclusion.**

Union respectfully submits that it has demonstrated good cause for an additional one-month extension, from October 31, 2016, to November 30, 2016, to submit its drive test data and propagation study reports for the Census Tracts, and that a grant of the amended Petition will be in the public interest. Union respectfully requests that the amended Petition be granted.

Respectfully submitted,

UNION TELEPHONE COMPANY

By:  \_\_\_\_\_

Todd Slamowitz  
John Cimko

LUKAS, NACE, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102  
(703) 584-8673

*Its Attorneys*

October 31, 2016

**EXHIBIT A**

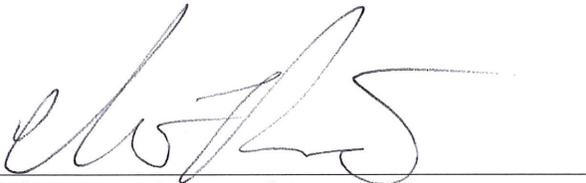
**DECLARATION UNDER PENALTY OF PERJURY**

## DECLARATION UNDER PENALTY OF PERJURY

I, Chris Reno, hereby declare under penalty of perjury as follows:

1. I am the Director of Accounting for Union Telephone Company (“Union”).
2. This Declaration is submitted in support of the Amendment to Petition for Limited Waiver and Request for Extension of Compliance Deadlines for Mobility Fund Phase I Public Interest Obligations (“Petition”), to be filed with the Commission by Union on October 31, 2016.
3. I declare under penalty of perjury, pursuant to Sections 502 and 503(b) of the Communications Act of 1934 and Section 1001 of Title 18, United States Code, that the facts and information contained in the foregoing Petition are true and correct to the best of my knowledge.

Executed on October 31, 2016.

A handwritten signature in black ink, appearing to read 'Chris Reno', is written over a horizontal line.

Chris Reno, Director of Accounting  
Union Telephone Company